LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY
IN SUPPORT OF THE
INTERIM FEASIBILITY REPORT

REAL ESTATE PLAN
APPENDIX G

21 APRIL 2014
REVISED: 28 JULY 2014

PREPARED
BY THE
SACRAMENTO DISTRICT
REAL ESTATE DIVISION
SOUTH PACIFIC DIVISION

ANNEX A - Real Estate Policy Guidance Letter No. 31 - Real Estate Support to Civil Works Planning Paradigm (3X3X3)

1. PURPOSE OF THE REAL ESTATE PLAN

This Real Estate Plan (REP) presents the real estate requirements and costs for an Interim Feasibility Report for the Lower San Joaquin River Study. The information contained herein is tentative in nature for planning purposes only. At the time the REP was prepared, the Project Delivery Team (PDT) had reached the TSP milestone, and feasibility-level analysis was just beginning. Footprint maps which identify locations of access, staging, borrow, mitigation and other project features were not available. The information contained within this REP is based on assumptions made by the PDT and estimated acreages of project features. This REP does not fully conform to the requirements of Chapter 12 (ER 405-1-12). This report is for planning purposes only and will be revised for the final plan to conform to Chapter 12.

2. PROJECT AUTHORIZATION

The general authority for flood control investigations in the San Joaquin River Basin arises under the Flood Control Act of 1936 (Public Law [PL] 74-738), Sections 2 and 6 and amended by the Flood Control Act of 1938 (PL 75-761). The Flood Control Act of 1936, Section 6 explicitly permits further reports to be authorized by congressional resolutions. Further studies of this river system were directed in the 8 May 1964 resolution adopted by the Committee on Public Works of the House of Representatives. The resolution reads:

"*Resolved by the Committee on Public Works of the House of Representatives, United States, that the Board of Engineers for Rivers and Harbors is hereby requested to review the reports on the Sacramento-San Joaquin Basin Streams, California, published in House Document No. 367, 81st Congress, 1st session, and other reports, with a view to determine whether any modifications to the recommendations contained therein are advisable at this time, with particular reference to further coordinated development of the water resources in the San Joaquin River Basin, California*."

The LSJRFS is being accomplished in accordance with the Section 905(b) Analysis (Water Resources Development Act (WRDA) 1986) dated 23 September 2004. The Section 905(b) Analysis was approved by the Commander, SPD on 10 June 2005. The Section 905(b) Analysis was prepared with funds identified in House Report 108-357 (Conference Report to accompany H.R. 2745 for the Energy and Water Development Appropriations Act of 2004) for use under the Sacramento-San Joaquin River Basins Comprehensive Study for a reconnaissance study to evaluate environmental restoration, flood protection, and related purposes for the Lower San Joaquin River. House Report 105-190, which accompanied the Energy and Water Development Appropriations Act of 1998 (PL 105-62) authorized the Sacramento and San Joaquin River Basins Comprehensive Study (Comprehensive Study).

The Section 905(b) Analysis determined that there was Federal interest in pursuing feasibility level investigations for potential flood risk reduction and ecosystem restoration projects in the Lower San Joaquin River area. This study has been focused on flood risk reduction through

additional scoping and coordination with the non-Federal sponsors, resource agencies and local stakeholders.

This study will only partially address the Sacramento – San Joaquin Basin Streams, California Comprehensive Study authority. Therefore, the LSJRFS will be called an "Interim Feasibility Report" which indicates that the study is addressing the flood risk issues of a specific area within the authority, rather than the entire area authorized for study.

3. PROJECT DESCRIPTION AND LOCATION

TSP Alternative 7a

This REP identifies the real estate requirements and estimated costs for the Tentatively Selected Plan (TSP), Alternative 7a, North and Central Stockton, Delta Front, Lower Calaveras River, and San Joaquin River Levee Improvements excluding RD 17.

The North Stockton area is defined by the right bank levees of the Calaveras River and the levees along the Delta Front traveling northward along Tenmile Slough,, Fourteen Mile Slough, crossing Five Mile Creek, and traveling north to tie into the Federal project levee across Mosher Slough at the Atlas Tract.

The Central Stockton area is defined by the left bank levees of the Stockton Diverting Canal, the left bank of the Calaveras River, the right bank levees of the San Joaquin River, and right bank levees of French Camp Slough.

Design features of Alternative 7a include:

Levee Raises

Raising levee height will increase the level of performance of existing levees. The increase in levee height may require additional levee footprint area to meet design requirements for minimum levee slope and top width.

Levee Reshaping

Improvements to existing levees of the Delta Front, Calaveras River and San Joaquin River will restore them current USACE standards. Typically, the levees will have material added where necessary to recover design height and restore top width to 12 to 20 feet.

Cut-off Walls

This measure would be implemented to address through- and under-seepage issues that affect levee performance and safety. Installation of the cut-off wall is accomplished by degrading the levee to one-half height and creating the wall with a soil-bentonite mix. Once the mix has cured,

the levee is restored to design height and side slopes to meet current design standards. The depth of the cut-off walls will typically be from 20 to 80 feet, but may vary depending on subsurface conditions and depth required to stop through and underseepage.

Deep Soil Mixing (Seismic)

This measure would be implemented to provide seismic stability to the Delta Front levees where required. The deep soil mixing (seismic) measure would involve installation of a grid of drilled soil-cement mixed columns aligned longitudinally with, and transverse to, the levee extending beyond the levee prism. This measure acts to minimize lateral deformation of the levee during seismic events.

Erosion Protection

This measure would consist of protection of the water-side banks of levees to prevent or reduce erosion due to high flows, tides, or wave action. Bank protection consists of rock sized to withstand expected flows, tidal action, and wave run-up placed on the levee.

Closure Structures

This measure would include construction of closure structures at the mouth of backwater sloughs such as Smith Canal and Fourteen Mile Slough to provide flood risk management from flood flows in the Lower San Joaquin River and Delta. The closure structures consist of side walls placed in the existing embankments, and a liftable gate crossing the waterway. Typical operation of the gate would have the gate resting on the bottom of the channel, and closed during high water events or maintenance.

4. NON FEDERAL SPONSORS

The San Joaquin Area Flood Control Agency and the Sacramento and San Joaquin Drainage District acting by and through the Central Valley Flood Protection Board of the State of California will be required to serve as the Non-Federal Sponsors (NFS) for construction and operation, maintenance, repair, rehabilitation and replacement responsibilities if this project is authorized. Both sponsors have legal authority to acquire and hold title to real property for the project under State of California Water Code Section 8590. The sponsors also have the power of eminent domain and “quick-take” authorities for this project.

5. LANDS, EASEMENTS AND RIGHTS-OF-WAY

The real estate cost estimate for the Sacramento District Real Estate Division identified general land use types and their values in the study area. The general land use types and their values were approved by the Sacramento District Real Estate Division in April 2014.

The inventory of lands, easements and rights-of-way required to support the project was created by viewing conceptual designs over real photographs by Engineering and Real Estate Divisions. These findings will be revised for the final plan to conform to Chapter 12 (ER 405-1-12).

The following table demonstrates the acreage; ownerships affected and proposed estate for each project feature. This information is tentative in nature and will be revised once the recommended plan is selected.

Table 1: TSP. The following Table 1 provides a summary of acres required and ownerships affected for the TSP Alternative 7a. The TSP alternative covers approximately 33 miles and includes 30.6 miles of cutoff wall, 3 miles of seismic deep soil mixing, 0.5 mile new levee, 6.8 miles of levee improvements, 4.9 miles of bank and erosion protection and 2 control structures. Their descriptions will be developed in the final plan to conform to Chapter 12.

Table 1: TSP Alternative

	TSP Alternative 7a		
REAL ESTATE	**North Stockton**	**Central Stockton**	**TOTAL**
CONSTRUCTION FOOTPRINT (AC)	98	60	**158**
LANDSIDE AFFECTED PARCELS (#)	343	137	**480**
PERMANENT RELOCATIONS (#)	214	80	**294**
BANK PROTECTION EASEMENT (AC)	9	0	**9**
PERPETUAL FLOOD PROTECTION LEVEE EASEMENT (AC)	56.2	56.0	**112.2**
TEMPORARY WORK AREA EASEMENT (AC)	155	111	**266**
BORROW EASEMENT (AC)	100	90	**190**

Access and Temporary Staging

The majority of staging areas for construction of this project will be located within the right-of-way for the levee footprint or existing right-of-way. Specific access and staging areas were not identified. During construction planning analysis indicates that public-owned properties exist and additional areas will need to be acquired. This information is tentative in nature and will be revised once the recommended plan is selected. A standard Temporary Work Area Easement will be acquired for the additional right-of-way necessary for access and staging

Staging areas for construction of the closure structures on Fourteenmile Slough and on Smith Canal would be immediately adjacent to the levees on either side of the closure structures. The Buckley Cove, Louis Park, and Dos Reis Park parking lots could be used for staging of materials and equipment.

Borrow

It is estimated that 1.8 million cubic yards of borrow material could be needed to construct the project. Because the project is in preliminary stages of design, detailed studies of borrow needs have not been completed. For the purposes of NEPA/CEQA a worst case scenario is being evaluated for the volume of borrow material needed. Actual volumes exported from any single borrow site would be adjusted to match for fill.

Potential locations for borrow material were identified by the San Joaquin Area Flood Control Agency, a project sponsor. Three publicly-owned, potential borrow areas include an area west of the Stockton East Water District water treatment plant. This is a 265 acre site and could potentially be excavated as deep as 20 feet. Another site would be at the Tidewater development near French Camp Slough and Highway 99. This site is a 93 acre basin with potentially 1,700 acre-feet of earth volume. At the Mariposa Lake development nestled between Mariposa Road and State Route 4 east of State Route 99 is another potential borrow site. The entire site comprises approximately 6 square miles and approximately 3,500 acres of the site would be available for borrow. The potential borrow material sites have not been field tested, therefore to ensure that sufficient borrow material would be available for construction the Corps looked at all recommended locations for 20 times the needed material. This would allow for sites that do not meet specifications or are not available for excavation of material.

The excavation limits on the borrow sites would provide a minimum buffer of 50 feet from the edge of the borrow site boundary. From this setback, the slope from existing grade down to the bottom of the excavation would be no steeper than 3H:1V. Excavation depths from the borrow sites would vary between 7-10 feet. The borrow sites would be stripped of top material and excavated to appropriate depths. Once material is excavated, borrow sites would be returned to their existing use whenever possible, or these lands could be used to mitigate for project impacts, if appropriate.

Mitigation

The sponsors will purchase credits from mitigation banks in the project area. For planning purposes approximately 56,180 mitigation acres needed at an estimated cost of $53,000,000 for Alternative 7a. The costs to purchase credits from mitigation banks is not a real estate cost.

NFS Owned Lands

Portions of the TSP levee footprints lie within easement interests held by the San Joaquin Area Flood Control Agency and the Sacramento and San Joaquin Drainage District. The NFS has the legal capability to provide the lands required for the TSP Plan.

This information is tentative in nature and will be revised once the recommended plan is selected and sponsor lands can be reviewed for interest owned and sufficiency to support project purposes.

The Non-Federal Sponsor will be notified in writing of the risks of acquiring right-of-way interests before execution of the construction agreement.

6. ESTATES

Non-standard estates are not anticipated for implementation of the TSP Plan. The NFS will acquire the minimum necessary interests in real estate to support the construction and subsequent operation and maintenance of the recommended plan and these standard estates are identified as follows:

BANK PROTECTION EASEMENT

A perpetual and assignable easement and right-of-way in, on, over and across the land hereinafter described for the location, construction, operation, maintenance, alteration, repair, rehabilitation and replacement of a bank protection works, and for the placement of stone, riprap and other materials for the protection of the bank against erosion; together with the continuing right to trim, cut, fell, remove and dispose therefrom all trees, underbrush, obstructions, and other vegetation; and to remove and dispose of structures or obstructions within the limits of the right-of-way; and to place thereon dredged, excavated or other fill material, to shape and grade said land to desired slopes and contour, and to prevent erosion by structural and vegetative methods and to do any other work necessary and incident to the project; together with the right of ingress and egress for such work; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however to existing easements for public roads and highways, public utilities, railroads and pipelines.

FLOOD PROTECTION LEVEE EASEMENT

A perpetual and assignable right and easement in [the land described in Schedule A] to construct, maintain, repair, operate, patrol and replace a flood protection levee, including all appurtenances thereto; reserving, however, to the owners, their heirs and assigns, all such rights and privileges in the land as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

TEMPORARY WORK AREA EASEMENT

A temporary easement and right-of-way in, on, over and across [the land described in Schedule A] for a period not to exceed _____, beginning with date possession of the land is granted to the United States, for use by the United States, its representatives,

agents, and contractors as a (borrow area) (work area), including the right to (borrow and/or deposit fill, spoil and waste material thereon) (move, store and remove equipment and supplies, and erect and remove temporary structures on the land and to perform any other work necessary and incident to the construction of the _____ Project, together with the right to trim, cut, fell and remove therefrom all trees, underbrush, obstructions, and any other vegetation, structures, or obstacles within the limits of the right-of-way; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges as may be used without interfering with or abridging the rights and easement hereby acquired; subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines.

BORROW EASEMENT

A perpetual and assignable right and easement to clear, borrow, excavate and remove soil, dirt, and other materials from [the land described in Schedule A] subject, however, to existing easements for public roads and highways, public utilities, railroads and pipelines; reserving, however, to the landowners, their heirs and assigns, all such rights and privileges in said land as may be used without interfering with or abridging the rights and easement hereby acquired.

7. EXISTING FEDERAL PROJECTS WITHIN THE STUDY AREA

There are federal projects in the study area. Their descriptions will be developed in the final plan to conform to Chapter 12.

8. FEDERALLY OWNED LANDS NEEDED FOR THE PROJECT

There are no known federally owned lands needed for this project.

9. NAVIGATIONAL SERVITUDE

The navigation servitude is the dominant right of the Government under the Commerce Clause of the U.S. Constitution to use, control and regulate the navigable waters of the United States and submerged lands thereunder.

The rock revetment measure will be constructed from the landside of the levee. The project does not require lands, easements or rights-of-way within any navigable watercourses. Therefore, the Federal Navigational Servitude will not be invoked for this project.

10. BASELINE COST ESTIMATE

The baseline cost estimate is the total costs of the lands combined with the cost of support and administrative activities to acquire those lands. The estimated total costs for Real Estate Acquisition for the TSP follows. The date of the approved cost estimate prepared by Sacramento

District Real Estate Division was April 2014. The costs include land payments as well as administrative costs and incremental costs associated with acquiring the real estate interests to include potential condemnations. Displaced persons and business may be entitled to relocation assistance benefits (P.L. 91-646, Title II as amended). The cost estimate is tentative in nature and will be revised once the recommended plan is selected and appropriate real estate interests are determined.

TSP ALTERNATIVE 7a COST ESTIMATE

	COST	CONTG %	FED TOTAL	NFS TOTAL	TOTAL PROJECT COST (FED + NFS)
FED RE Admin Support Account 01	$10,430,000	5%	**$10,952,000**		
FED Lands and Damages Account 01	0	0	**0**		
NFS RE Admin Support Account 01	$12,660,000	5%		**$13,293,000**	
NFS Lands and Damages Account 01	$79,057,000	35%		**$106,727,000**	
Total Project Cost (FED +NFS):					**$130,972,000**

11. UNIFORM RELOCATION ASSISTANCE (PL 91-646, TITLE II AS AMENDED)

Relocation assistance benefits to residents may be applicable, including storage of household goods, moving costs, lodging, incidentals, differential payments, etc. Businesses could be entitled to receive advisory services, reimbursement for actual reasonable moving costs, re-establishment costs which are capped at $10,000, and certain reasonable and necessary incidental costs associated with the relocation. Cost estimates will be revised after completion of feasibility-level design and appropriate real estate interests are determined.

A preliminary estimate of potential PL 91-646 displacements was prepared by the Sacramento District Real Estate and Engineering Divisions. The impacts and estimates relating to potential displacements, and the anticipated need to provide relocation assistance benefits, are provided exclusively for project cost estimating purposes only and are not intended to be relied upon for provision of benefits and/or payment of the estimates referenced herein. Should the project be authorized, a relocation plan will be provided by the NFS.

UNIFORM RELOCATION ASSISTANCE (PL 91-646)

Alternative	
TSP	335

12. ZONING ORDINANCES

There will be no application or enactment of zoning ordinances in lieu of, or to facilitate, acquisition for structural features of this project. Should plans be developed for non-structural features during feasibility-level design, it is possible that there will be certain building restrictions in areas where elevations or flood proofing measures are proposed, and in areas where there may be buy-out acquisitions.

13. ACQUISITION SCHEDULE

The following acquisition schedule for project features is based on the premise that the project will impact approximately 800 landowners for the levee alignment. It is assumed that the project will be constructed in sections over a 10-15 year period. An acquisition schedule will be prepared when the recommended plan is selected. The schedule below provides the total amount of time to complete the acquisition of real estate rights for mitigation and for the construction of the levee alignment and other project features based on the preliminary information available at this time. This schedule is only for planning purposes and will be updated for the final plan.

REAL ESTATE ACQUISITION SCHEDULE				
Project Name: Lower San Joaquin River Flood Reduction Project	COE Start	COE Finish	NFS Start	NFS Finish
Receipt of Preliminary Drawings from Engineering/PM	TBA	TBA	TBA	TBA
Receipt of Final Drawings from Engineering/PM	TBA	TBA	TBA	TBA
Formal Transmittal of Final Drawings and Instruction to Acquire LEERDS	TBA			
Conduct Landowner Meetings				6 months
Prepare/Review Mapping & Legal Descriptions				1 year
Obtain/Review Title Evidence				1 year
Obtain/Review Tract Appraisals				1 year
Conduct Negotiations				4 years
Condemnation				6 years
Prepare/Review Condemnations				
Perform Condemnations				
Obtain Possession				
Complete/Review PL 91-646 Benefit Assistance				2 years
Certify All Necessary LERRDS for Construction				TBA
Prepare and Submit Credit Requests				TBA
Review/Approve or Deny Credit Requests	TBA	TBA		
Establish Value for Creditable LERRDS	TBA	TBA		

14. FACILITY/UTILITY RELOCATIONS

Preliminary facility and utility relocation data was collected and detailed by the Sacramento District, Engineering Division. At the time of this report, feasibility-level analysis had yet to be performed. The estimated total costs of relocations for all alternatives range from $32,706,000 - $45,204,000.

Real Estate Guidance issued for 3x3x3 studies indicates that if the costs of relocation of facilities and utilities is less than 30% of project costs, a preliminary compensable interest report should not be prepared (refer to Real Estate Policy Guidance Letter Non. 31-Real Estate Support to Civil Works Planning Paradigm (3x3x3) dated January 10, 2013, attached as Exhibit A). Because the estimated cost of relocations does not exceed 30% of total project cost, an Attorney's Preliminary Opinion of Compensable Interest was not prepared for this project. Rather, once the recommended plan is selected and feasibility level of design is complete, a Relocations Report will be prepared and the Real Estate Plan will include a relocations assessment indicating which relocations are covered by the substitute facilities doctrine. A Final Attorney's Opinion of Compensability will be prepared before the project partnership agreement is executed for each utility/facility.

The Non-Federal Sponsor will perform these relocations as a part of its responsibility under the project authority. The Government will make a final determination of the relocations necessary for the construction, operation or maintenance of the project after further analysis, and completion and approval of the Final Attorney's Opinion of Compensability for each of the impacted utilities and facilities.

15. HAZARDOUS, TOXIC AND RADIO ACTIVE WASTE

At the time of this report, a Phase I Environmental Site Assessment has not been conducted. This discussion related to contaminates on lands within the project area will be revised after database searches are completed and a recommended plan is selected.

16. LANDOWNER CONCERNS

The project has received wide-spread support from the community; however, the attitudes of the landowners who will be directly affected by its construction are not known. The Non-Federal Sponsor is confident that they will be able to acquire the right-of-way required for the project.

17. PROJECT MAP

(See attached Exhibit A). These maps indicate the overall project site. Once specific sites are determined, maps will be generated and provided to the Non-Federal Sponsor.

ASSESSMENT OF NON-FEDERAL SPONSOR'S REAL ESTATE ACQUISITION CAPABILITY

LOWER SAN JOAQUIN RIVER FEASIBILITY STUDY

Sponsor: San Joaquin Area Flood Control Agency
Sacramento and San Joaquin Drainage District acting by and through the Central Valley Flood Protection Board of the State of California

I. Legal Authority:

a. Does the sponsor have legal authority to acquire and hold title to real property for project purposes? **YES**

Please cite the authority: **STATE OF CALIFORNIA WATER CODE SECTION 8590**

b. Does the sponsor have the power of eminent domain for this project? **YES**

c. Does the sponsor have "quick-take" authorities for this project? **YES**

d. Are any of the lands/interests in land required for the project located outside the sponsor's political boundary? **NO**

e. Are any of the lands or interests in land required for the project owned by an entity whose property the sponsor cannot condemn? **NO**

II. Human Resource Requirements:

a. Will the sponsor's in-house staff require training to become familiar with the real estate requirements of Federal projects including P.L. 91-646, as amended? **NO**

b. If the answer to II. a. is "yes," has a reasonable plan been developed to provide such training? **N/A**

c. Does the sponsor's in-house staff have sufficient real estate acquisition experience to meet its responsibilities for the project? **YES**

d. Is the sponsor's project in-house staffing level sufficient considering its other workload, if any, and the project schedule? **YES**

e. Can the sponsor obtain contractor support, if required, in a timely fashion? **YES**

f. Will the sponsor likely request U.S. Army Corps of Engineers (USACE) assistance in acquiring real estate? **NO**

III. Other Project Variables:

a. Will the sponsor's staff be located within reasonable proximity to the project site? **YES**

b. Has the sponsor performed satisfactorily on other USACE projects? **YES**

Prepared by:

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Realty Specialist
Acquisition and Management Branch

Date: 21 August 2014

Reviewed and Approved by:

Sharon Caine
Chief, Real Estate Division

EXHIBIT A – PROJECT MAP

US Army Corps of Engineers®
Sacramento District

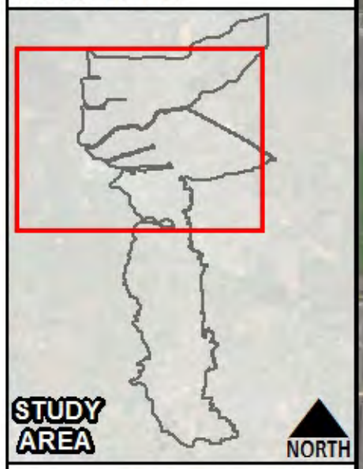
LOWER SAN JOAQUIN Feasibility Study

Alternative LS-7a

Proposed Project Footprint

1) This information is not intended as a substitute for a field survey by a licensed professional, or an application that requires legal or engineering accuracy.

2) Parcel boundary data is only a representation of ground features projected on to the Earth's surface by computer programs from raw data obtained from local government agencies and is not necessarily in whole, or in part, based upon any physical survey, study, or recording, professional or otherwise, of the covered properties.



Map Creator: Aaron Schlein, USACE, Sacramento District

Main Map Scale 1:50,000
Reference Map Scale 1:450,000

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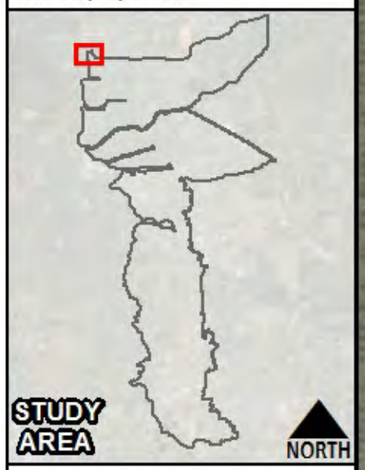

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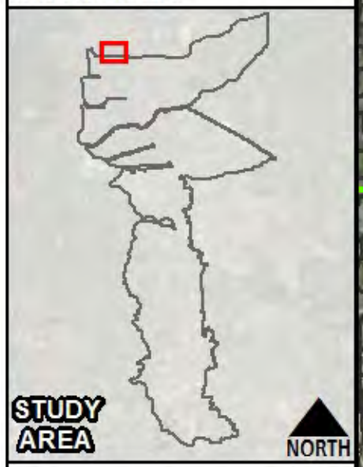

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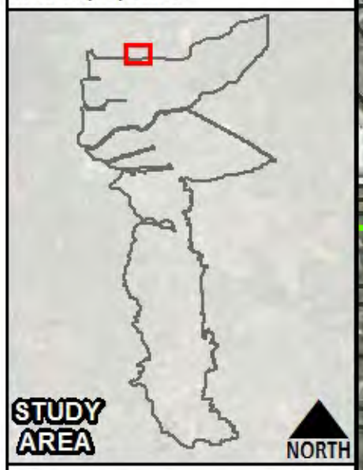

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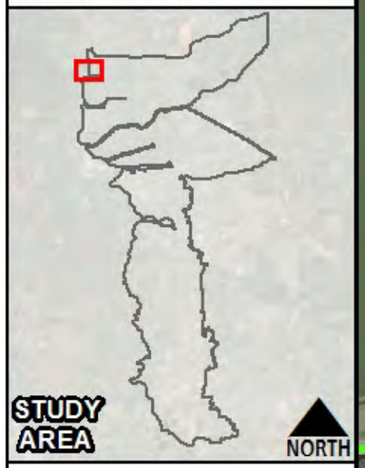

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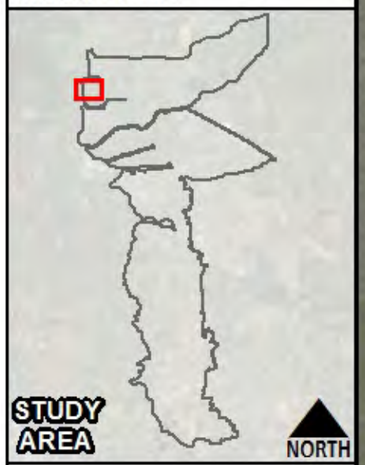

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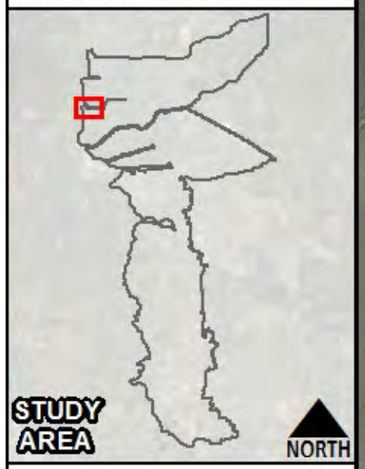

Map Creator: Aaron Schlein, USACE, Sacramento District

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Reference Map Scale 1:450,000

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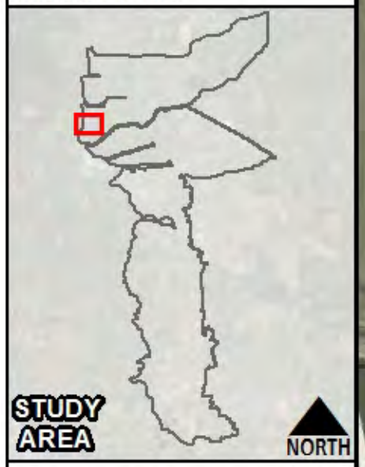

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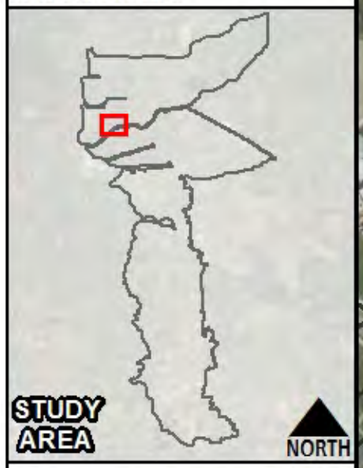

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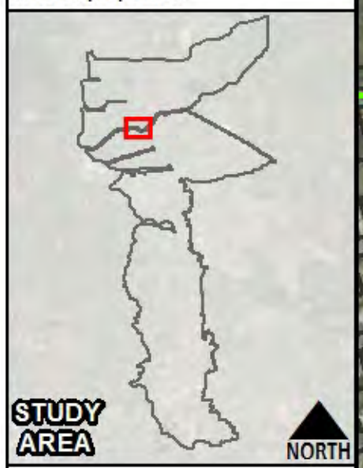

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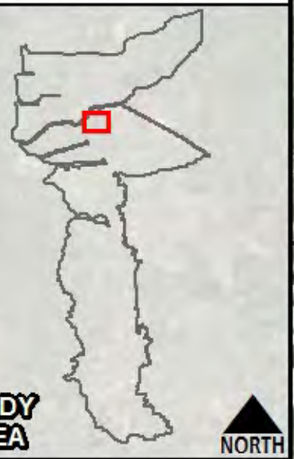

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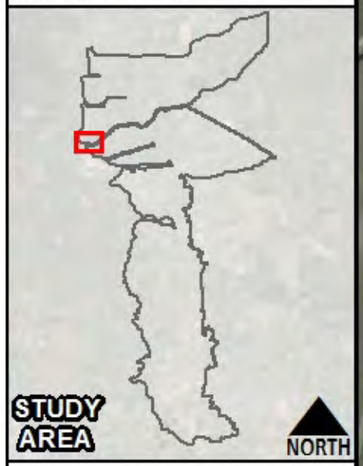

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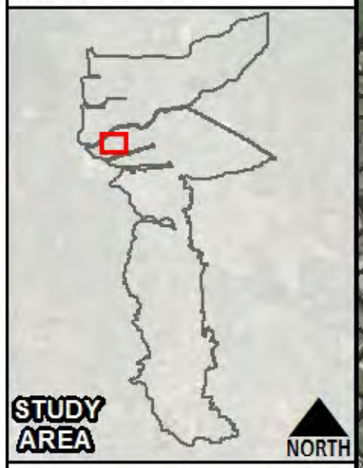

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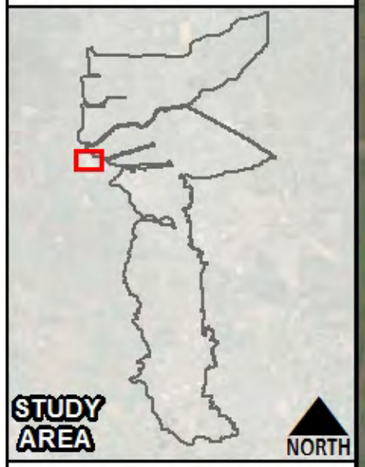

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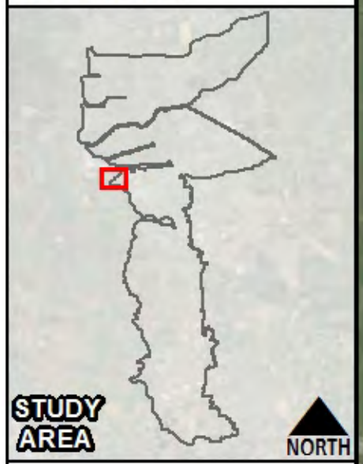

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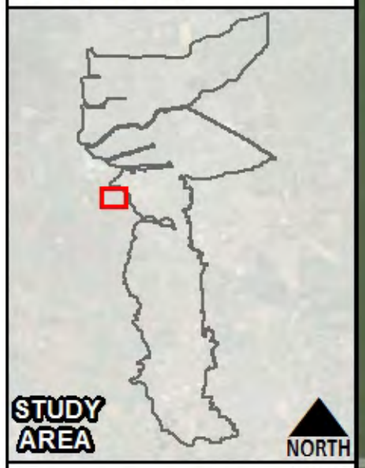

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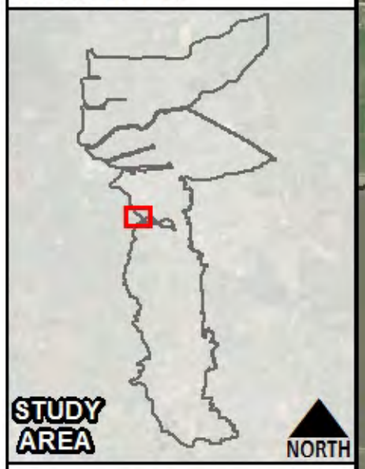

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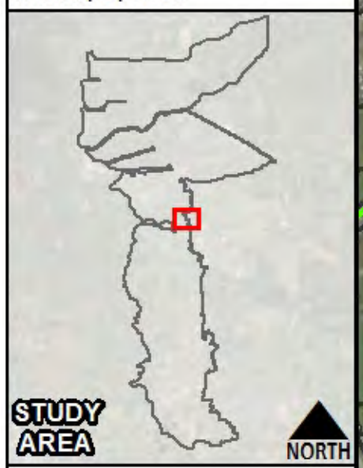

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LOWER SAN JOAQUIN RIVER FEASIBILITY STUDYIN SUPPORT OF THE INTERIM FEASIBILITY REPORT

APPENDIX D
ANNEX A
REAL ESTATE POLICY GUIDANCE LETTER NO. 31
REAL ESTATE SUPPORT TO CIVIL WORKS
PLANNING RPARADIGN (3X3X3)

DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
441 G STREET NW
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEMP-CR

JAN 1 0 2013

MEMORANDUM FOR SEE DISTRIBUTION

SUBJECT: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning Paradigm (3x3x3)

1. References.

a. Memorandum, CECW-CP, 8 February 2012, Subject: U.S. Army Corps of Engineers Civil Works Feasibility Study Program Execution and Delivery

b. ER 5-1-11, USACE Business Process, 1 November 2006

c. EC 405-1-04, Appraisal, 30 Dec 2003

d. ER 1105-2-100, Planning Guidance Notebook, 22 Apr 2000

e. ER 405-1-12, Chapter 12, Real Estate Roles and Responsibilities for Civil Works, Cost Shared and Full Federal Projects, Change 31, 1 May 1998

2. Purpose. In accordance with reference a, this memorandum provides interim policy and guidance for real estate efforts associated with feasibility studies under the new Planning Paradigm, "SMART Planning," and the 3x3x3 rule. In accordance with the 3x3x3 rule, all feasibility studies should be completed within three years, at a cost of no more than $3 million, utilize three levels of vertical team coordination, and be of a "reasonable" report size.

3. Background. Real Estate has been fully engaged in the implementation of the 3x3x3 by actively participating in each webinar, the planning modernization workshop, and serving as part of the HQ Transition Team. In accordance with references b-e, Real Estate involvement is essential to the development and implementation of any pre-authorization project. Paragraph 12-16 of reference e. outlines the significant topics that must be covered in a real estate plan (REP). The level of detail necessary to apply the requirements of real estate policy and guidance will vary depending on the scope and complexity of each project.

As outlined in Chapter 12, the minimum interests in real property necessary to support various types of projects must be identified. As projects are scoped at the beginning of the feasibility phase (via a Charette or other forum), it is essential that Real Estate become familiar with the project authority and purposes to make a determination of the minimum interests and estate(s), both standard and non-standard, necessary as projects are scoped and alternatives evaluated. If a

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non-standard estate will be needed, this should be discussed with MSC and HQ Real Estate as early as possible to ensure that the justification is sound and will serve the project purpose.

4. Policy. Typically, the attorney's preliminary opinion of compensability and gross appraisals are two areas that require more detail than may be readily available during the start of the feasibility phase, and are critical to determination of accurate estimates for real estate and total project costs. Due to the focus on 3 years or less for study duration, it will be essential for Real Estate to be adaptable and scale its requirements, decision making, and risk management in proportion to the significance of total project costs.

a. Gross Appraisals:

Specific to gross appraisals, EC 405-1-04 provides that cost estimates are utilized for preliminary planning of projects and in other cases, brief gross appraisals are acceptable. For purposes of the feasibility phase, the detail will vary as outlined below.

(1) For projects in which the value of real estate (lands, improvements, and severance damages) are not expected to exceed ten percent of total project costs (total cost to implement project), a cost estimate (or rough order of magnitude) will be acceptable for purposes of the feasibility phase.
(2) For projects in which the value of real estate (lands, improvements, and severance damages) do not exceed 30 percent of total project costs (total cost to implement project), a brief gross appraisal will be acceptable for purposes of the feasibility phase. A brief gross appraisal will follow format issued by Chief Appraiser.
(3) For projects in which the value of real estate (lands, improvements, and severance damages) exceed 30 percent of total project costs (total cost to implement project), a full gross appraisal will be prepared in accordance with the appraisal regulation and guidance provided by EC 405-1-04 and the Chief Appraiser.

b. Attorney's Opinion of Compensability:

As described in paragraph 12-17 of Chapter 12, utility/facility relocations may require preliminary attorney's opinions of compensability. While the practice of obtaining preliminary attorney's opinions of compensability provides a high degree of certainty with regard to project costs during the feasibility phase, such opinions can be time consuming and may provide more certainty than may be optimal for feasibility purposes when potential utility/facility relocation costs do not constitute a large percentage of total project costs. In support of the goals set out in the new planning paradigm described in reference a., Districts shall adhere to the following guidance:

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(1) Where the estimated total cost to modify all project utility facility relocations, including the value of any additional lands that may be required to perform the relocations does not exceed 30 percent of estimated total project costs, the District Office of Real Estate shall, in lieu of an attorney s opinion of compensability prepare a real estate assessment. Such a real estate assessment, will address the following questions:

(a) Is the identified utility facility generally of the type eligible for compensation under the substitute facilities doctrine (e.g., school, highway, bridge, water and sewer systems, parks, etc.)
(b) Does the District have some valid data or evidence that demonstrates that it has identified an owner with a compensable interest in the property

If the answer to both questions is yes, then the District Office of Real Estate shall reflect the cost of providing a substitute facility in the Real Estate Plan (REP) and all other feasibility study cost estimates. If the answer to either or both questions is no, the District shall not reflect the cost of a substitute facility in the REP or other feasibility study cost estimates. However, the REP narrative should still include a discussion on the facility with results of analysis and project impact. For cost shared projects, the non-federal sponsor must be advised that the inclusion of substitute facilities costs in the REP or other use feasibility study estimates is for planning and budgeting purposes only and does not constitute a preliminary or final determination of compensability by the agency regardless of whether the cost of substitute facilities are reflected in the feasibility study documents. Using a real estate assessment does not eliminate the need to obtain a final attorney s opinion of compensability prior to execution of the PPA.

(2) Where the estimated total cost to modify all project facility relocations, including the value of any additional lands that may be required to perform the relocations, has public or political significance or the costs exceed 30 percent of estimated total project costs, a preliminary opinion of compensability shall be prepared for each owner s facilities. The level of documentation for each relocation item should be based on the significance of the relocation item to project formulation and estimated project costs.

Real Estate products, such as the REP, must be adaptable and scaled based on the project scope. Additionally, Real Estate must utilize the risk register to highlight areas where cost, schedule or uncertainty is greater in order to manage risk. Going forward, the Real Estate Division will continue to work closely with the Planning and Policy Division, Engineering and Construction Division, the Programs Integration Division and the National Law Firm on the Planning SmartGuide. This SmartGuide will provide more on procedures, tips, techniques and tools for

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SUBJECT: Real Estate Policy Guidance Letter No. 31-Real Estate Support to Civil Works Planning Paradigm (3x3x3)

specific types of planning projects to aid in implementation of the new Planning Paradigm. All bulletins and updates on the SmartGuide can be found at: http://planning.usace.army.mil/toolbox/.

5. Duration. The policies stated herein will remain in effect until amended or rescinded by Policy Memorandums, Policy Guidance Letters, Engineers Circulars or Engineer Regulations.

FOR THE COMMANDER:

SCOTT L. WHITEFORD
DIRECTOR OF REAL ESTATE

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MISSISSIPPI VALLEY DIVISION (CEMVD-TD-R)
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NORTHWESTERN DIVISION (CENWD-PDS)
PACIFIC OCEAN DIVISION (CEPOD-RE)
SOUTH ATLANTIC DIVISION (CESAD-PDS-R)
SOUTH PACIFIC DIVISION (CESPD-ET-R)
SOUTHWESTERN DIVISION (CESWD-ET-R)

CF:
COMMANDER,
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HUNTINGTON DISTRICT (CELRH-RE)
LOUISVILLE DISTRICT (CELRL-RE)
NASHVILLE DISTRICT (CELRN-RE)
PITTSBURGH DISTRICT (CELRP-RE)
MEMPHIS DISTRICT (CEMVM-RE)
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KANSAS CITY DISTRICT (CENWK-RE)
OMAHA DISTRICT (CENWO-RE)
PORTLAND DISTRICT (CENWP-RE)
SEATTLE DISTRICT (CENWS-RE)
WALLA WALLA DISTRICT (CENWW-RE)
ALASKA DISTRICT (CEPOA-RE)
HONOLULU DISTRICT (CEPOH-PP-RE)
JACKSONVILLE DISTRICT (CESAJ-RE)
MOBILE DISTRICT (CESAM-RE)
SAVANNAH DISTRICT (CESAS-RE)
ALBUQUERQUE DISTRICT (CESPA-RE)
LOS ANGELES DISTRICT (CESPL-RE)
SACRAMENTO DISTRICT (CESPK-RE)
FORT WORTH DISTRICT (CESWF-RE)
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LITTLE ROCK DISTRICT (CESWL-RE)
TULSA DISTRICT (CESWT-RE)
CECC-R